



**STATE OF NEW JERSEY**

**Board of Public Utilities**

**Two Gateway Center**

**Newark, NJ 07102**

**www.bpu.state.nj.us**

**TELECOMMUNICATIONS**

IN THE MATTER OF THE JOINT )  
PETITION OF VERIZON )  
COMMUNICATIONS INC. AND MCI, INC. )  
FOR APPROVAL OF MERGER )

**PROVISIONAL ORDER**

BPU DOCKET NO. TM05030189

**(SERVICE LIST ATTACHED)**

BY COMMISSIONER FREDERICK F. BUTLER:

The New Jersey Board of Public Utilities ("Board"), pursuant to N.J.S.A. 48:2-1 et seq., has been granted general supervision and regulation of and jurisdiction and control over all public utility systems which operate within the State of New Jersey. Moreover, the Board has specifically been granted the authority to review certain mergers and acquisitions by and of such public utilities, pursuant to N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10.

On March 3, 2005 Verizon Communications Inc. ("Verizon") and MCI, Inc. ("MCI") (jointly "petitioners") filed a petition for the approval of a transaction which would result in MCI becoming a wholly-owned subsidiary of Verizon.

On June 14, 2005, Broadview Networks, Inc., DIECA Communications, Inc. d/b/a Covad Communications Company, CTC Communication Corp. ("CTC Corp.") and XO Communications Services Inc. (collectively "Competitive Carrier Group" or "CCG") filed a joint motion to intervene in this matter under N.J.A.C. 1:1-16.1. In support thereof the CCG asserts that each member is a certified competitive telecommunications carrier in New Jersey competing directly with Verizon and MCI, especially in business markets characterized by the use of loop and transport facilities at the DS1.5 level and above and in the market for enhanced services such as Digital Subscriber Line. The CCG contends that it buys other services and facilities from petitioners at wholesale in order

to service New Jersey customers. The CCG further contends that the merger will substantially, specifically and directly affect the availability and cost of such services, which are essential to its competitive retail service offerings. The CCG represents that its interest in this proceeding is therefore substantial and cannot be adequately represented by other parties, and that its intervention will not create undue delay or confusion.

Co-counsel for the CCG, Harry M. Davidow, Esq. of the law firm of Kelley Drye & Warren, LLP also filed a motion for admission *pro hac vice* in this matter. Mr. Davidow filed certifications in support thereof from himself and co-counsel Joseph A. Boyle, Esq.

On June 15, 2005 Conversent Communications of New Jersey, LLC ("Conversent") also filed a motion seeking the right to intervene in this proceeding. In support of its application Conversent notes that it is an entity authorized to provide local exchange and interexchange telecommunications services in the New Jersey, and does in fact provide a variety of voice and data services to small and medium sized businesses by means of xDSL, DS1 and DS3 loops obtained from Verizon. Conversent states that it is collocated in several Verizon wire centers, and serves customers using a combination of unbundled network element loops and dark fiber dedicated transport, obtained from Verizon and other carriers. Conversent's alleged interest in this proceeding is based on its position as both a wholesale customer and a direct competitor of Verizon. Conversent states its opinion that a degradation of the service quality it receives from Verizon and the possible re-monopolization of markets in which it competes, which it sees as two possible outcomes of the merger, would have a substantial impact on the company and its customers. Conversent also states that its intervention is timely, will not cause undue delay or prejudice to any party, and is necessary, because no other party can adequately represent Conversent's interests.

By letter dated June 22, 2005, Verizon notified the Board that it does not oppose the intervention of the CCG or Conversent in this matter. No party filed any opposition to the CCG or Conversent motions.

## DISCUSSION

Motions for intervention are controlled by the standards set forth in N.J.A.C. 1:1-16.3. In the absence of statutory permission for intervener status, any person or entity who will be "substantially, specifically and directly affected by the outcome of a contested case" may seek to intervene as a full party to the proceeding. N.J.A.C. 1:1-16.1(a). Pursuant to N.J.A.C. 1:1-16.3(a), adjudication of such a motion requires an analysis of the "nature and extent of the movant's interest" in the matter, whether or not the "movant's interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case," "the prospect of confusion or undue delay arising from the movant's inclusion," and other appropriate matters. Every motion for leave to intervene also acts, in the alternative, as a motion for permission to participate. N.J.A.C. 1:1-16.5.

Participation provides a lesser level of involvement in the matter and requires a showing of a "significant interest" on the part of the moving party. N.J.A.C. 1:1-16.6(a).

Here, neither the CCG nor Conversent have or assert a statutory right to participate, so must instead present a showing that intervention, or, in the alternative, participation is proper. Without making any determination as to the validity of the movants' predictions regarding the state of competition in New Jersey should the merger be approved, it is clear that they believe that the results of this proceeding will potentially have a long-term impact on their competitive position in New Jersey's telecommunications market. Given the size and competitive reach of petitioners in New Jersey, I find this assumption to be reasonable on its face and supportive of the standard for intervention set forth in N.J.A.C. 1:1-16.1(a). Moreover, I find that movants' participation will constructively add to the record, and that at this early stage of the proceeding, no party can claim to be unfairly prejudiced by their intervention, which was timely filed according to the schedule set out in the Board's Prehearing Order.

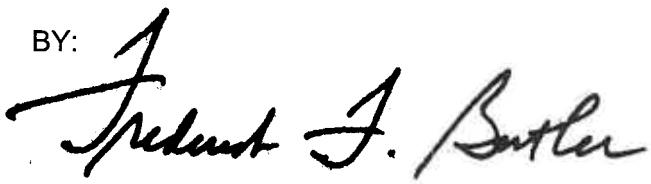
The admission of out-of-state attorneys is determined according to N.J.A.C. 1:1-5.2, which itself references New Jersey Court Rule R. 1:21-1. The Presiding Officer in an administrative matter may, in his or her discretion, permit *pro hac vice* admission if the moving attorney has fulfilled the requirements set out in these two rules.

Based on the uncontested submissions of Harry M. Davidow, Esq. and Joseph A. Boyle, Esq., counsel for the CCG, I find that Mr. Davidow has met the requirements of N.J.A.C. 1:1-5.2 and R. 1:21-1 for *pro hac vice* admission in this proceeding. Specifically, I find that good cause exists for his admission based on the fact that this case involves a complex area of the law, administrative telecommunications practice, in which Mr. Davidow is a specialist. Mr. Davidow's admission and appearance are subject to the requirements and restrictions set forth on New Jersey Court Rule R. 1:21-2(c) and payment of appropriate amounts as required by R. 1:20-1(b), R. 1:28-2 and R. 1:28B-1(e).

Accordingly, upon review of the aforementioned motions, I find that the CCG and Conversent have met the requirements for intervenor status under N.J.A.C. 1:1-16 et seq., and their motions for intervention as full parties to this proceeding are **HEREBY GRANTED**. I also find that good cause exists for the *pro hac vice* admission of Harry M. Davidow, Esq. in this proceeding, and his motion for such admission is **HEREBY GRANTED**.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED: 6-28-05

BY:  
  
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FREDERICK F. BUTLER  
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